<u>REMARKS</u>

Claims 1-9 and 15-21 remain pending for the present application. Applicants respectively request reconsideration of the above referenced application in view of the above claim amendments and the remarks presented below. Claims 1, 3, 8, and 21 have been amended. No new matter has been added.

<u>35 U.S.C. Section 101 rejections:</u>

The above referenced Office Action rejects Claims 8-9 and 19-20 because the claimed invention as supported by the specification can be interpreted as computer software per se and therefore has no structure to make the supposed apparatus actually an apparatus. Applicants have amended Claim 8 recite a computer-readable medium as recited in MPEP 2106.01. Applicants respectfully assert that Claims 9 and 19-20 overcome the rejection by virtue of their dependency. Accordingly, Applicants respectfully request the 35 U.S.C. 101 rejection be withdrawn.

<u>35 U.S.C. Section 112 rejections:</u>

The above referenced Office Action rejects Claims 8-9 and 19-20 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regards as the invention. Applicants have amended Claim 8 to

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more particularly point out and distinctly claim the subject matter which recites the feature of a means for storing each translated sequence of instructions. Thus, Applicants respectfully assert that the 35 U.S.C. 112, second paragraph, rejection is overcome. Applicants respectfully assert that Claims 9 and 19-20 overcome the rejection by virtue of their dependency. Accordingly, Applicants respectfully request the 35 U.S.C. 112, second paragraph, rejection be withdrawn.

The above referenced Office Action rejects Claims 8-9 and 19-20 under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonable convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, has possession of the claimed invention. As mentioned above, Applicants have amended Claim 8 to include the feature of a means for storing each translated sequence of instructions which the specification provides adequate disclosure for as required by 35 U.S.C. 112, first paragraph. Thus, Applicants respectfully assert that the 35 U.S.C. 112, first paragraph, rejection is overcome. Applicants respectfully assert that Claims 9 and 19-20 overcome the rejection by virtue of their dependency. Accordingly, Applicants respectfully request the 35 U.S.C. 112, first paragraph, rejection be withdrawn.

<u>35 U.S.C Section 102 Rejections:</u>

Claims 1, 3, 8-9, 15, and 21 are rejected under 35 U.S.C. Section 102(e) as being anticipated by Babaian et al. Applicants respectfully traverse.

Applicants have amended independent Claim 1 to include the features of interpreting each of a sequence of target instructions and executing the interpreted target instructions as claimed. Further, Applicants have amended independent Claim 1 to include the feature of the translating is performed when the number of times a sequence of target instructions is executed exceeds a preset count as claimed. Applicants respectfully assert that Claims 3, 8, and 21 recite features similar to Claim 1.

Applicants have reviewed Babaian and do not understand Babaian to anticipate the features of interpreting each of a sequence of target instructions and executing the interpreted target instructions as claimed and wherein translating is performed when the number of times a sequence of target instructions is executed exceeds a preset count as claimed. Further, Applicants respectfully assert that Babaian does not anticipate the feature of <u>storing translated instructions</u> which were <u>translated when a sequence of target instructions is executed a number of times that exceeds a preset count</u> as claimed (emphasis added). In contrast, Applicants understand Babaian to perform binary translation and optimization on every instruction (paragraph 0012-0013). Applicants respectfully assert that Babaian is silent as to the

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feature of interpreting and storing translated instructions after the instruction was interpreted a number of time greater than a preset count as claimed. Further, Applicants point out that paragraph 17 of the Office Action mailed 5/10/04 (paper number 13 and reference in the above referenced Office Action) admits that Babaian does not teach collecting statistics regarding the execution of sequences of instructions which are interpreted as claimed. Therefore, Applicants respectfully assert that Babaian does not anticipate Claim 1 within the meaning of 35 U.S.C. 102(e).

With respect to Claims 9 and 15, Applicants respectfully state that Claims 9 and 15 depend from allowable independent Claims 8 and 1 respectively and recite further features of the present claimed invention. Therefore, Applicants respectfully assert that Claims 9 and 15 are allowable as depending from allowable base Claims.

35 U.S.C Section 103 Rejections

Claims 2, 4-7, and 16-20 are rejected under 35 U.S.C. Section 103 as being unpatentable over Babaian in view of Lethin (US Patent No. 6,463,582). Applicants respectfully traverse.

For the reasons stated above, Applicants respectfully assert that independent Claim 1, from which Claims 2 and 16-18 depends, independent Claim 3, from which Claims 4-7 depend, independent Claim 8, from which 19

and 20 depend are allowable over Babaian. In addition, Applicants

respectfully assert that Lethin does not remedy the short comings of Babaian.

More specifically, Applicants respectfully assert that Lethin does not teach or

suggest the features of interpreting target instructions and executing the

interpreted instructions and translating a sequence of instructions after the

number of times the sequence has executed exceeds a preset count as

claimed. To the extent that Letchin may mention tracking the number of

times a branch is executed exceeds a threshold number, Applicants

respectfully assert that Letchin does not teach or suggest storing translated

instructions based on the number of times the interpreted instructions are

executed (emphasis added). Accordingly, Applicants respectfully assert that

Claims 2, 4-7, and 16-20 are allowable over Babaian in view of Lethin, as

being dependent on allowable base claims.

CONCLUSION

All remaining claims of the present application are now in condition for allowance. The Examiner is urged to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Please charge any additional fees or apply any credits to our PTO deposit account number: 50-4160.

Respectfully submitted,

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